IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 1113 OF 1996

Bharat Petroleum Corporation Ltd. ... Plaintiff.

V/s.

M/s. J.D. Carriers & Ors. ... Defendants.

Ms. Sheeja John i/b. M/s. M.P. Savla & Co. for the Plaintiff.
None for the Defendant.

CORAM : DR. D.Y. CHANDRACHUD,J.

3RD JULY 2007.

P.C. :-

. The Suit has been instituted for the recovery of a sum of Rs.9,52,405.26 togetherwith interest for short delivery of consignments entrusted for transportation. The First Defendant is a partnership firm of which the Second and Third Defendants are partners. An agreement was entered into between the Plaintiff and Defendants on 9th September 1992 by which the Defendants agreed to provide Tank-Lorries for transportation of bulk petroleum products. On 28th February 1993, the Defendants agreed to transport 500 MT. of furnace oil from the refinery of the Plaintiff

at Mahul to the Sheva Bunkering Installation. An amount calculated at the rate of Rs.60.74 per kilo ltr. was agreed to be paid to the Defendants in pursuance of a letter dated 28th February 1993. Subsequently, by an order dated 30th April 1993, the Defendants agreed to the transportation of the Plaintiffs' products from the refinery to the Sheva Port Installation at the rate of Rs.80/- per KL.

2. From time to time, the Plaintiffs handed over furnace oil and light diesel oil to the Defendant for transportation. The Defendants failed to deliver 23 consignments between 23rd February 1993 and 28th June 1993. The products which were not delivered consisted of 150 kilo ltrs. of furnace oil and 82 kilo ltrs. of light diesel oil of a total value of Rs.13,15,519.68.

3. The Defendant had furnished a bank guarantee to secure its obligation in the amount of Rs.30,000/- which was encashed by the Plaintiff. The Plaintiff has given due credit to the Defendant for the amount received under the bank guarantee, as well as in respect of amounts payable to the Defendants against 37 bills after adjustment and amounts payable to the

Defendants for transportation. The suit has been filed for the recovery of the balance of Rs.9,52,405/- together with interest. A notice of demand addressed by the Plaintiff on 28th February 1996 did not receive any response.

4. The Defendants have been served with a writ of summons and an affidavit of the bailiff in the Office of the Sheriff has been duly filed.

5. The Plaintiff has filed an affidavit in lieu of examination-in-chief of its Manager, Transport (retail) who has deposed to the averments contained in the plaint. A compilation of documents has been filed. The Defendant has failed to respond to the writ of summons and to defend the suit. The claim of the Plaintiff has remained uncontested. The claim of the Plaintiff is for the recovery of the value of 23 consignments short delivered by the Defendant which were entrusted to the Defendant for transportation by the Plaintiff. The claim of the Plaintiff has been duly proved and established on the basis of the documentary material on record and the evidence adduced on behalf of the Plaintiff.

6. The Suit shall accordingly stand decreed in terms of prayer clauses (a) and (b) subject to the modification that the Plaintiff shall be entitled to interest on the principal sum of Rs.9,52,405.26 at the rate of 12% per annum from the date of the institution of the suit until payment or realization.